

**CALENDAR ITEM
C51**

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02/20/15
PRC 9084.1
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AMENDMENT AND ASSIGNMENT OF LEASE

LESSEE/ASSIGNOR:

350 Beach Road LLC

ASSIGNEE:

Burlingame Point LLC

AREA, LAND TYPE, AND LOCATION:

4.45 acres, more or less, of filled and partially filled land in San Francisco Bay, Burlingame, San Mateo County.

AUTHORIZED USE:

Parcel A – East/West Parcel: Improvements to and maintenance of a public roadway with at least 25 public parking spaces for access to the San Francisco Bay Trail, Fisherman’s Park driveway, and realigned Airport Boulevard improvements.

Parcel B – North/South Parcel: Improvements to and maintenance of the San Francisco Bay Trail including access to Fisherman’s Park, public utilities, shoreline protection, and realigned Airport Boulevard improvements.

LEASE TERM:

Parcels A & B – 49 years, beginning September 20, 2013.

PROPOSED AMENDMENT:

Authorized Use: Parcel C – Fisherman’s Park: Right of entry and construction of interim park improvements to Fisherman’s Park and a 12-month maintenance warranty.

Lease Term: Parcel C – Fisherman’s Park: 4 years and 8 days, beginning February 20, 2015, or upon completion of construction of interim park improvements to the satisfaction of Commission staff and in substantial

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conformance to approved design plans and specifications, and a 12-month maintenance warranty period.

CONSIDERATION:

Annual rent in the amount of \$3,660 to be adjusted by the Consumer Price Index (CPI) on the fifth anniversary of the lease and on every fifth anniversary for the duration of the lease.

SPECIFIC LEASE PROVISIONS:

Insurance: Liability insurance in an amount no less than \$3,000,000 per occurrence.

Bond: Improvement Bond in the amount of no less than \$10,000,000.

OTHER PERTINENT INFORMATION:

1. 350 Beach Road LLC owns the property located at 350 Beach Road, Burlingame; Assessor's Parcel Number 026-350-130 (the "Private Parcel"). For development purposes, all project related documents show the address as 300 Airport Boulevard, Burlingame.
2. 350 Beach Road LLC entered into a Development Agreement, dated June 18, 2012, with the city of Burlingame for a development project (the "Burlingame Point Project") on the Private Parcel and a portion of sovereign land.
3. The Burlingame Point Project is a multi-phase development consisting primarily of commercial office buildings and amenities, associated infrastructure improvements including the relocation and realignment of Airport Boulevard through the Private Parcel, extension of the San Francisco Bay Trail, and public shoreline and open space improvements including landscaping and parking. This project is located immediately south of Fisherman's Park (Parcel C).
4. On September 20, 2013, the Commission authorized the issuance of Lease No. PRC 9084.1, a General Lease – Recreational, Protective Structure, and Right-of-Way Use, to 350 Beach Road LLC, subject to several preconditions, for the construction of San Francisco Bay Trail improvements on a portion of the existing Airport Boulevard that will be realigned through the Private Parcel as a part of the Burlingame Point Project (Calendar Item C73). This lease area overlaps with a portion of those lands leased to New Town Hotel, Inc. (New Town) under Lease No. PRC 4682.9.

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5. 350 Beach Road LLC has since entered into a Purchase and Sale Agreement with Burlingame Point LLC. The Purchase and Sale Agreement was made August 14, 2014, by and between 350 Beach Road LLC and Burlingame Point LLC for the sale of the Private Parcel and development rights under the Burlingame Point Project. 350 Beach Road LLC intends to assign its interest in Lease No. PRC 9084.1 to Burlingame Point LLC upon the close of escrow and thereafter Burlingame Point LLC would be responsible for fulfilling all developer obligations under the Development Agreement and the subject lease.
6. A precondition of Lease No. PRC 9084.1, required 350 Beach Road LLC to obtain New Town's consent (the "Approved Consent") for the construction of San Francisco Bay Trail Improvements and realignment of Airport Boulevard within the overlapping, non-exclusive lease premises. Whereas the consent requirement originally necessitated the coordination of the parties, during the ensuing negotiations, the parties jointly acknowledged an immediate need to improve Fisherman's Park and worked diligently with Commission staff to facilitate the cooperation of New Town for the construction of interim park improvements pending the future development of New Town's adjacent parcel. Future build-out of the San Francisco Bay Trail Improvements to and through Fisherman's Park along this segment of the Bay are anticipated in conjunction with the development of New Town's parcel and will be required by the San Francisco Bay Conservation and Development Commission (BCDC) in conjunction with New Town's future entitlements.
7. Subject to Commission staff approval of final design plans and specifications, the proposed interim park improvements may include, but not be limited to, public safety improvements including the removal of the entrance gate and existing parking lot (replacement public parking is being provided for under the Burlingame Point Project); and public serving amenities including bicycle and pedestrian paths, San Francisco Bay overlooks, and site furnishings such as benches, tables, trash receptacles, signage, lighting and landscaping. Final design plans may also be subject to technical design requirements, and restrictions or limitations imposed by regulatory agencies.
8. For business reasons independent from the various agreements and key terms negotiated and agreed to in principle by the parties, New Town representatives have failed to timely cooperate thus necessitating the removal of the lease precondition requiring the Approved Consent of New Town. Despite this late development, 350 Beach Road LLC, and in conjunction with Burlingame Point LLC (collectively "Developer"), has

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nonetheless agreed to undertake the development and construction of interim improvements to Fisherman's Park. Funding for the construction, repair, and installation of interim park improvements is provided for by the Developer, with a \$200,000 budget for actual construction costs. Additionally, the Developer is responsible for the initial maintenance period during a 12-month maintenance warranty period. The Developer shall be solely responsible for all work to construct, repair and improve Fisherman's Park in substantial conformance with design plans and specifications for interim park improvements to be developed at the Developer's sole cost and expense.

9. Under the terms of the lease amendment, staff shall notify New Town that its maintenance obligations under Lease No. PRC 4682.9 shall be temporarily held in abeyance during the construction of Fisherman's Park, including a 12-month maintenance warranty period. Upon notice and completion of construction activities and termination of the Assignee's right to possession of Parcel C under this amendment, New Town shall immediately resume active management responsibility for the long-term maintenance of the newly constructed interim park improvements at Fisherman's Park.
10. Staff has determined that 350 Beach Road LLC has been unable to fulfill the preconditions of the lease requiring an Approved Consent and cooperative coordination to improve Fisherman's Park despite exploring all commercially reasonable efforts. Staff has recommended and 350 Beach Road LLC and/or assigns have agreed to enter into a Supplemental Indemnity agreement to protect the State's interests in the absence of an executed Approved Consent. 350 Beach Road LLC and/or assigns have offered planning, funding, and construction of Interim Park Improvements to Fisherman's Park with a Supplemental Indemnity in satisfaction of all lease preconditions as originally authorized on September 20, 2013 (Calendar Item C73).
11. 350 Beach Road LLC is now applying for an amendment and an assignment of Lease No. PRC 9084.1 to Burlingame Point LLC. Burlingame Point LLC is a California limited liability company and was formed August 11, 2014, by its sole members H&QAP REF-1, LLC and KYLLI, Inc. H&QAP REF-1, LLC, a Delaware limited liability company, is wholly owned by H&Q Asia Pacific (H&Q AP). KYLLI, Inc., a California corporation, is wholly owned by Genzon Property Group Co., Ltd., headquartered in Shenzhen, China.

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12. Staff has reviewed audited financial statements of various funds managed by H&Q AP. Based on the Assignee's financial history, staff recommends acceptance of an unconditional performance guaranty by H&QAP REF-1, LLC and KYLLI, Inc. (collectively "Guarantor") on behalf of the newly formed Burlingame Point LLC for the performance of all lease obligations.

13. **Interim Park Improvements:** The staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (CEQA) as a categorically exempt project. The project is exempt under Class 4, Minor Alterations to Land; California Code of Regulations, Title 14, section 15304.

Authority: Public Resources Code section 21084 and California Code of Regulations, Title 14, section 15300.

14. **Assignment of Lease:** The staff recommends that the Commission find that the proposed assignment of lease does not have a potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment, and is, therefore, not a project in accordance with CEQA.

Authority: Public Resources Code section 21065 and California Code of Regulations, Title 14, sections 15060, subdivision (c)(3) and 15378.

15. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

EXHIBITS:

- A. Land Description
- B. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Interim Park Improvements: Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15061 as a categorically exempt project, Class 4, Minor

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Alterations to Land; California Code of Regulations, Title 14, section 15304.

Assignment of Lease: Find that the proposed assignment of lease is not subject to the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15060, subdivision (c)(3), because the subject activity is not a project as defined by Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378.

SIGNIFICANT LANDS INVENTORY FINDING:

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

AUTHORIZATION:

1. Authorize the amendment of Lease No. PRC 9084.1, a General Lease – Recreational, Protective Structure, and Right-of-Way Use, effective February 20, 2015, primarily to remove the lease precondition requiring an Approved Consent from New Town Hotel, Inc. and accept a Supplemental Indemnity in lieu thereof; and to include Fisherman's Park (Parcel C) in the Lease Premises, as described in Exhibit A and shown on Exhibit B (for reference purposes only), attached and by this reference made a part hereof;
 - a. Beginning on February 20, 2015, for a term of four (4) years and eight (8) days or upon completion of construction of interim park improvements and 12-month maintenance warranty period to the satisfaction of Commission staff and in substantial conformance to approved design plans and specifications as to Parcel C only; the original term as to Parcels A and B shall remain in effect without amendment;
 - b. Said lease amendment shall be in a form substantially similar to that on file at the Commission and, as to Parcel C only, is for a right of entry to construct and install interim park improvements to Fisherman's Park;
 - c. Consideration, insurance and bond requirements shall remain in effect without amendment;
 - d. Authorize Commission staff to review and approve design plans and specifications for the construction of interim park improvements which may include, but not be limited to, public safety and access improvements and public serving amenities;

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- e. Authorize Commission staff to provide final approval that said improvements were constructed according to design plans and specifications;
 - f. Authorize Commission staff to accept a quitclaim (or equivalent) upon completion of construction of the interim park improvements and 12-month maintenance warranty period to the reasonable satisfaction of Commission staff;
 - g. All other conditions of the lease shall remain in effect without amendment; and
- 2. Authorize the assignment of Lease No. PRC 9084.1, a General Lease – Recreational, Protective Structure, and Right-of-Way Use, and as amended, effective upon the close of escrow under that certain Purchase and Sale Agreement made August 14, 2014, by and between 350 Beach Road LLC and Burlingame Point LLC; and acceptance of an unconditional guarantee by H&QAP REF-1, LLC and KYLLI, Inc., (collectively “Guarantor”) on behalf of Burlingame Point LLC for the performance of all lease obligations; and
- 3. Authorize Commission staff and the Office of the Attorney General to take all steps necessary, including litigation, against all parties to the aforementioned agreements, their agents, successors, and/or assigns, to enforce the terms of the Lease and as amended, to effectuate the construction of public access improvements at Fisherman’s Park, and to otherwise implement the objectives of this Authorization.

EXHIBIT A

PRC 9084.1

LAND DESCRIPTION

Three parcels of State owned land lying in the City of Burlingame, County of San Mateo, State of California, described as follows:

PARCEL A

Parcel 3 as described in Exhibit A of Grant Deed recorded in Book 6198, Page 76, Official Records of said County.

PARCEL B

The South 956 feet of Parcel 4 as described in Exhibit A of Grant Deed recorded in Book 6198, Page 76, Official Records of said County.

PARCEL C

Parcel 4 as described in Exhibit A of Grant Deed recorded in Book 6198, Page 76, Official Records of said County.

EXCEPTING THEREFROM the South 956 feet of said Parcel 4.

END OF DESCRIPTION

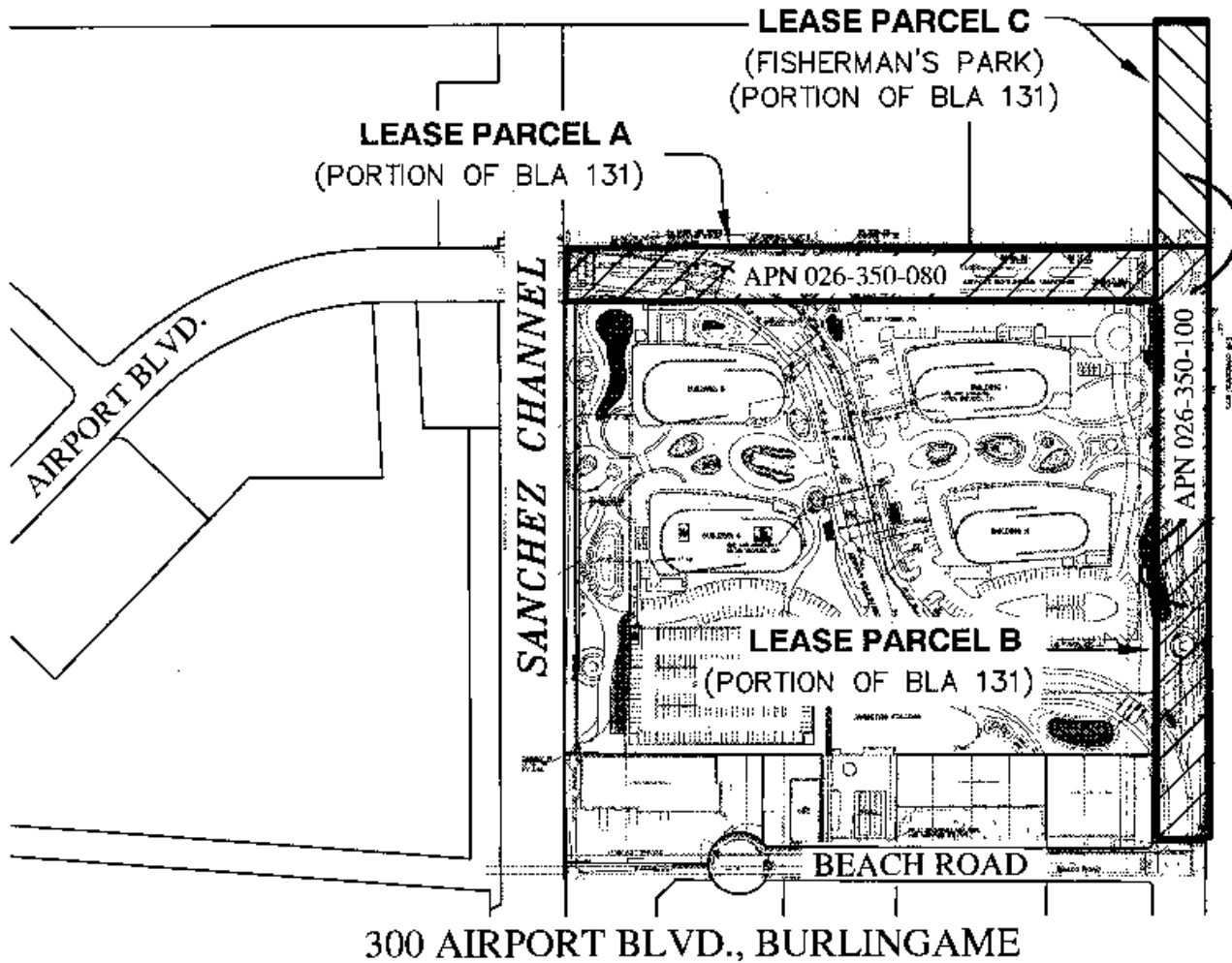
Prepared 2/10/2015 by the California State Lands Commission Boundary Unit.



NO SCALE

SITE

SAN FRANCISCO BAY



NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

Exhibit B

PRC 9084.1

350 BEACH ROAD, LLC

APN 026-350-080 & 026-350-100

GENERAL LEASE -

RECREATIONAL, PROTECTIVE

STRUCTURE AND

RIGHT - OF - WAY USE

SAN MATEO COUNTY



DUF 2/3/2015